IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2004

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THE HONOURBLE MR.JUSTICE M. CHOCKALINGAM

C.R.P.NPD NO.727 OF 2004
AND
C.M.P.NO.5814 OF 2004

P. Nachimuthu (died)
1. Vanitha
2. Karthikeyan
3. Veeramani
4. Kannan
5. Manjula
6. Senthil .. Petitioners

-Vs-

Mathuraivelan .. Respondent

This civil revision petition is preferred under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and order of the learned Subordinate Judge, Dindigul (Appellate Authority) in RCA No.2 of 2003 dated 31.12.2003 against the judgment and order of the learned Principal District Munsif, Dindigul in RCOP No.47 of 1999.

!For Petitioners : Mr.Mukunthan

^For Respondents : ----

:ORDER

This revision petition has been brought forth by the revision petitioners, who are the legal representatives of the first respondent in the eviction petition, in which they suffered an order of eviction and the same was, subsequently, affirmed by the Appellate Authority also.
2. The respondent/landlord filed a petition for eviction on three grounds, namely, wilful default, causing damage to the property and for demolition and reconstruction under Sections 10(2)(i), (iii) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 alleging that the first respondent became the tenant in respect of the property agreeing to pay a monthly rental of Rs.250/-; that subsequently, it was enhanced to Rs.800/- from May, 1998; that he fell in arrears from July, 1998 and there was arrears for 14 months; that he has sent money order for Rs.1000/- and giving credit to the same, there was balance for a sum of Rs.10,200/-, and thus, there was a ground for wilful default; that the property was let out for residential

purpose; that he damaged the same by converting a part of the property as cattle shed; that apart from that the landlord has desired to demolish and reconstruct the building; that he has applied for blue print before the concerned Municipality; that he has paid the fee also and the building is also an old one and in a dilapidated condition, and hence there was an utter necessity to have a new construction and on that ground also, the tenant was to be evicted.

3. The first respondent resisted the petition stating that it is true that he was a tenant; that the monthly rental was only Rs.250/-; that there was no enhancement of rental nor there was any default on his part much less wilful default; that he was having only one cow and it was for family purpose and the same could not be stated that he has converted the same as cow shed or he damaged the property; that the third ground, namely, demolition and reconstruction, lacks bona fide, since the landlord neither had an intention nor he had got source to construct so and that the petition has got to be dismissed.

4. The Rent Controller, on the sufficiency of evidence, has accepted the case of the petitioner for demolition and reconstruction, while the other two grounds were rejected. On appeal by the first respondent, the Appellate Authority has discussed the evidence in extenso and confirmed the finding of the Rent Controller. Hence, this revision has been brought forth by the revision petitioners, who are the legal representatives of the first respondent in the eviction petition.

5. Heard the learned counsel for the revision petitioners. This Court is of the considered view that no case is made out, even for admission, by the revision petitioners. In the instant case, the first appellate Court has confirmed the findings of the Rent Controller that both the grounds, namely, wilful default and damage to the property, were not proved by sufficient evidence and there is nothing to interfere with the said finding. But, the Appellate Authority has affirmed the order of eviction of the revision petitioners on the ground of demolition and reconstruction. In the instant case, the petitioner/ landlord has applied before the concerned Municipality for construction of a new building and he has also paid the necessary fee. In order to prove the same, he has also filed documents. Ex.P.6 is the blue print what was placed before the Municipality and Ex.P.7 was the receipt for the payment of necessary fee. The evidence of P.W.1 was also appraised by both the Rent Controller and the Appellate Authority also. Needless to say it is that in a case like this where the landlord requires building for modification for better use and exploitation for better income, the better person to decide it is the landlord and not the tenant. In the instant case, it was a specific case of the petitioner in the eviction petition that the building was in a dilapidated condition and the same was also proved by the Advocate Commissioner, who has inspected the same and filed the report, which was clearly spoken to the fact.

6. Under the stated circumstances, the case of the revision petitioners that it lacks bona fide cannot be accepted, but on the contrary, there was sufficient evidence to hold that it was a bona fide requirement for demolition and reconstruction as contemplated under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 196 0. Hence, this Court has no reason to interfere with the order of the Appellate Authority and the order has got to be sustained. The learned counsel for the revision

petitioners would submit that the Appellate Authority has granted only two months time to hand over the possession to the landlord and the same should be enhanced reasonably. Though notice was not served on the respondent, the Court is of the view that in order to avoid the avoidable delay, it would be suffice to grant time for a period of six months from this day to vacate the premises and hand over the same to the landlord. Accordingly, time is granted.

7. In the result, this civil revision petition is dismissed, at the admission stage itself. No costs. Consequently, connected CMP is also dismissed.

Index : Yes
Internet : Yes
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To
1. The Principal District Munsif
(Rent Controller), Dindigul
2. The Principal Subordinate Judge,
(Appellate Authority)
Dindigul.